

BOULT
CUMMINGS
CONNERS
& BERRY
PLC

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@bccb.com

LAW OFFICES
414 UNION STREET, SUITE 1600
POST OFFICE BOX 198062
NASHVILLE, TENNESSEE 37219

TELEPHONE (615) 244-2582
FACSIMILE (615) 252-2380
INTERNET WEB <http://www.bccb.com/>

October 12, 2000

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500

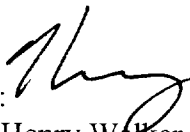
Re: *Complaint of AVR of Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P.
Against BellSouth Telecommunications, Inc. to Enforce Reciprocal
Compensation and "Most Favored Nation" Provisions of the Parties'
Interconnection Agreement*
Docket No. 98-00530

Dear David:

I have enclosed one original and thirteen copies of Hyperion's Response to BellSouth's Petition for a Stay in the above-captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Enclosure
cc: Parties

POSTED
10-13-00

POSTED

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

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TENN. REG. AUTH.

In Re: Complaint of AVR of Tennessee, LP) Docket No. 98-00530
d/b/a Hyperion of Tennessee, LP)
Against BellSouth Telecommunications,)
Inc. to Enforce Reciprocal)
Compensation and "Most Favored)
Nation" Provisions of the Parties')
Interconnection Agreement)
)

RESPONSE OF HYPERION TO BELL SOUTH'S PETITION FOR STAY

AVR of Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P. ("Hyperion") submits the following response to the Petition filed on October 6, 2000 by BellSouth Telecommunications, Inc. ("BellSouth") requesting a stay of the final order issued in the above-captioned proceeding on September 22, 2000.¹ The TRA's Order directed BellSouth to "immediately comply with the reciprocal compensation arrangement" between BellSouth and Hyperion, "consistent with the Initial Order of the Hearing Officer." Order, at 12. The Initial Order directed BellSouth to "treat ISP-bound traffic as local traffic" under the parties' interconnection agreement and to honor Hyperion's request to amend the agreement by opting into an alternate reciprocal compensation provision contained in an agreement between BellSouth and another carrier. Initial Order, at 33-34.

Hyperion opposes the Petition for Stay and further asks that, if the Petition is denied, the

¹ Like BellSouth, Hyperion was not served with a copy of the final order and did not learn of the order until a week after it was issued.

Tennessee Regulatory Authority (“TRA”) fix a date certain by which BellSouth must either comply with the agency’s Order or suffer appropriate sanctions.

Discussion

Presumably in recognition of the TRA’s well established position on the reciprocal compensation issue, BellSouth’s two-page Petition for Stay makes little effort to persuade the agency that BellSouth is likely to prevail on the merits of an appeal or that the equities or the public interest favor granting the Petition. Moreover, BellSouth does not even reference, much less attempt to distinguish, the Authority’s denial of a similar motion filed by BellSouth in the *Brooks Fiber* case. That case, of course, also involved the reciprocal compensation issue. *In Re: Petition of Brooks Fiber to Enforce Interconnection Agreement*, Docket 98-00118. “Order Denying Motion for Reconsideration and Stay,” issued March 3, 1999. A copy of the TRA Order denying BellSouth’s motion for a stay is attached.

In the *Brooks Fiber* case, BellSouth also attempted to obtain a stay from the United States District Court. *BellSouth v. Brooks Fiber Communications of Tennessee, et seq.*, Civil Case No. 3-98-0811. BellSouth’s request was denied for reasons equally applicable to the case at bar. The Court held that (1) BellSouth “has not made a substantial showing of likelihood of success on the merits on the reciprocal compensation issue,” (2) BellSouth would not suffer irreparable harm if forced to pay reciprocal compensation as ordered by the TRA; (3) Brooks Fiber would suffer substantial harm if a stay were granted through its inability to collect money owed by BellSouth; and (4) the public interest in promoting competition in the telecommunications market would be

served by enforcing the TRA's decision. Opinion at 6-7. A copy of the Court's order denying BellSouth's motion is attached.²

Each of the reasons cited by the Court remains valid today. First, as recently illustrated by the Fifth Circuit's decision in *Southwestern Bell Telephone v. Public Utility Commission of Texas, et al.*, 208 F.3d 475 (Fifth Cir., 2000), the courts continue to uphold state commissions which, like the TRA, treat ISP-bound traffic as "local" for reciprocal compensation purposes. Secondly, Hyperion is a relatively small carrier compared to BellSouth and is presently owed approximately \$2,146,584 in reciprocal compensation under the TRA's Order. See attached exhibit. Finally, just as the Court ruled in the *Brooks Fiber* case, BellSouth's continued efforts to avoid paying its contractual obligations hinders competition and frustrates the goals of the federal Telecommunications Act.

BellSouth's Petition for Stay in this case raises nothing new. Other than relying on previously filed briefs, which the Authority has already considered and rejected, the only argument for a stay presented in BellSouth's Petition is that "BellSouth should not be required to incur the administrative risk and expense associated with payment of reciprocal compensation for Internet traffic to [Hyperion] only to, perhaps, later be in the position of seeking return of the money after a successful appeal." Petition, at 1-2.

BellSouth made the same argument — verbatim — in its request to the Court for a stay in the *Brooks Fiber* appeal. In response, the TRA legal staff told the Court that "BellSouth clearly understands the value of money" and "the relative financial condition of the parties strongly militates in favor of the TRA's Order being enforced during the pendency of this appeal." Reply

² BellSouth has filed a petition asking the Court to reconsider the company's request for a stay. The Court has not acted on that petition.

Memorandum of the Tennessee Regulatory Authority filed October 6, 1998, at p. 15. A copy of the TRA's Memorandum in opposition to BellSouth's request for a stay is attached. Hyperion adopts and endorses that answer. BellSouth's Petition makes no other arguments.

Given the prior ruling of the TRA denying a stay in the *Brooks Fiber* case, the agency's strongly worded opposition to BellSouth's request to the Court for a stay in the *Brooks Fiber* appeal, and the Court's subsequent denial of BellSouth's motion, Hyperion will not further burden the record in the case by repeating points made in the attached documents. There is no legitimate distinction between that case and this one and no reason for the TRA to reach a different conclusion on the merits of BellSouth's request.

Conclusion

BellSouth's petition should be denied and the TRA's decision enforced "immediately," as ordered by the TRA. To encourage compliance, Hyperion requests that if the TRA denies the Petition for Stay, the TRA set a date certain by which BellSouth must either comply with the Order or face sanctions by the Authority.

Three years after the *Brooks Fiber* Order, BellSouth has still not complied with the agency's decision to pay reciprocal compensation for ISP-bound traffic. To avoid a similar delay in this case, Hyperion asks that a compliance deadline be set.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

Henry Walker

BOULT CUMMINGS CONNERS & BERRY, PLC

414 Union Street, Suite 1600

P.O. Box 198062

Nashville, Tennessee 37219

(615) 252-2363

Counsel for Hyperion of Tennessee, LP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the parties listed below on this the 12th day of October, 2000.

William J. Ellenberg, II, Esq.
Bennett L. Ross, Esq.
BellSouth Telecommunications, Inc.
Suite 4300, BellSouth Center
675 W. Peachtree Street, NE
Atlanta, GA 30375

Richard Collier, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500



ATTACHMENTS

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

March 3, 1999

IN RE:

PETITION OF BROOKS FIBER TO ENFORCE
INTERCONNECTION AGREEMENT AND FOR
EMERGENCY RELIEF

)
)
) Docket No.: 98-00118
)
)

ORDER DENYING MOTION FOR RECONSIDERATION AND STAY

On October 6, 1998, at a regularly scheduled Authority Conference, this matter came before the Tennessee Regulatory Authority (the "Authority") on the Petition for Rehearing and Stay filed by BellSouth Telecommunications, Inc. ("BellSouth") on August 27, 1998.

BellSouth's Petition requests that the Authority issue a stay of its Order affirming the Initial Order of Hearing Officer and rehear this matter based upon the Federal Communications Commission's ("FCC") filing of an amicus curiae brief in Southwestern Bell Telephone Co. v. Public Utility Commission of Texas et al., No. MO-98-CA-43 (W.D. Tex. filed June 29, 1998). The FCC's amicus curiae filing was made after the Authority's deliberations and oral ruling in this matter.¹

Pursuant to Tenn. Code Ann. § 65-2-116, a party must demonstrate either (1) that a material error of either fact or law was committed by the Authority, or (2) that new evidence has come to light that is sufficiently strong to reverse or modify the Authority's order, and such evidence could not have been previously discovered by due diligence.

¹ The Authority affirmed the Initial Order of the Hearing Officer at a regularly scheduled Authority Conference held on June 2, 1998.

Having considered BellSouth's Petition and relevant portions of the record, the Authority unanimously voted to deny the Petition because BellSouth's submission of the FCC's amicus curiae filing in the Southwestern Bell case is not sufficient to justify either a rehearing or stay under Tenn. Code Ann. §§ 65-2-116, 4-5-317, or 4-5-316.

IT IS THEREFORE ORDERED THAT:

1. BellSouth's Petition for Rehearing and Stay is denied.
2. Any party aggrieved by the decision of the Hearing Officer in this matter has the right of judicial review by filing a Petition for Review with the Tennessee Court of Appeals within sixty (60) days from and after the date of this Order.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY

BELLSOUTH
TELECOMMUNICATIONS, INC.,

Plaintiff,

v.

BROOKS FIBER COMMUNICATIONS
OF TENNESSEE, INC., et al.,

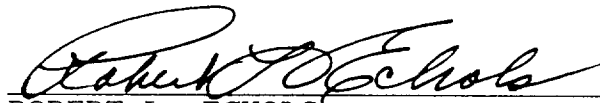
Defendants.

(53)

(4) The Motion of Plaintiff BellSouth Telecommunications, Inc. for Primary Jurisdiction Referral (Document Entry No. 10), to which Defendants have responded in opposition (Document Entry Nos. 21 and 23), is hereby DENIED AS MOOT.

(5) The Motion of BellSouth Telecommunications, Inc. to Stay Order of the Tennessee Regulatory Authority (Document Entry No. 12), to which Brooks Fiber has responded (Document Entry No. 22), is hereby DENIED.

It is so ORDERED.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

BELLSOUTH
TELECOMMUNICATIONS, INC.,

v.

Defendants.

MEMORANDUM

Because Plaintiff has properly alerted the Court to relevant new authority and because the Court will decide the merits of this

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79(a),
FRCP, on 9/30/09 By: JSK

case on the parties' submissions, upon thorough review of the administrative record, and without discovery, the Motion to File Supplemental Authority and for Order to Establish Procedural Schedule (Document Entry No. 38) is GRANTED.

Because the Federal Communications Commission ("FCC") has now issued a declaratory ruling addressing the question Plaintiff sought to have referred to the agency, Plaintiff's Motion for Primary Jurisdiction Referral (Document Entry No. 10) is DENIED AS MOOT.

For the reasons discussed below, the motion to stay (Document Entry No. 12) is DENIED.

Plaintiff BellSouth Telecommunications, Inc. ("BellSouth") filed this Complaint pursuant to the Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 (1996) ("Telecommunications Act"), seeking review of a decision of the Tennessee Regulatory Authority ("TRA") regarding an interconnection agreement between BellSouth and Defendant Brooks Fiber Communications of Tennessee, Inc. ("Brooks Fiber"). The Court has jurisdiction over this matter pursuant to 47 U.S.C. § 252(e)(6)(1996).

I. FACTS AND PROCEDURAL HISTORY

The following facts are undisputed. Plaintiff BellSouth and Defendant Brooks Fiber are telecommunications companies that provide local exchange service in the state of Tennessee. BellSouth is the "incumbent," or established local provider, whereas Brooks Fiber is attempting to enter the market as a competitor to

BellSouth. Defendant TRA is a state agency with the authority to regulate intrastate telecommunications services offered by public utilities in Tennessee.

On September 11, 1996, BellSouth and Brooks Fiber entered an Interconnection Agreement ("Agreement") regarding the rates, terms, and conditions for the interstate connection of their telecommunications networks. The companies now dispute whether the "reciprocal compensation provisions" of this Agreement apply to calls made by BellSouth's local telephone customers and delivered by Brooks Fiber to Internet Service Providers ("ISPs") which are Brooks Fiber's local telephone customers. Brooks Fiber alleges that the disputed calls are "local," and that, under the Agreement, BellSouth must compensate Brooks Fiber for these calls. BellSouth maintains the calls are "interstate" and, as such, do not implicate the reciprocal compensation provisions. On February 20, 1998, Brooks Fiber petitioned the TRA to decide this question, alleging it was losing up to \$500,000 per month in Tennessee as a result of BellSouth's failure to pay for these calls.

On August 17, 1998, the TRA ruled that the calls are "local" and ordered BellSouth to "immediately comply with the reciprocal compensation arrangement set forth in the Interconnection Agreement." On September 1, 1998, BellSouth filed the instant Complaint, seeking judicial review of the TRA order.¹ BellSouth

¹On August 27, 1998, BellSouth filed with the TRA a "Petition for Rehearing and a Stay" of the TRA Order. On March 3, 1999, the TRA denied that petition.

filed the instant Motion to Stay on September 18, 1998.²

II. STANDARD OF REVIEW

In determining whether or not to grant a preliminary injunction, a district court considers four factors: (1) the movant's likelihood of success on the merits; (2) whether the movant could suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest. Connection Distrib. Co. v. Reno, 154 F.3d 281, 288 (6th Cir. 1998), cert. denied, ___ U.S. ___, 119 S.Ct. 1496, 143 L.Ed.2d 650 (1999). None of these factors, standing alone, is determinative of whether an injunction should be granted. Id. Rather, the court should balance all four factors. Id.

III. DISCUSSION

BellSouth asserts that, upon posting of a supersedeas bond, it is entitled to a stay of the TRA Order pending appeal. BellSouth maintains that the Court has inherent authority to issue such a stay by analogy to Rule 62(d) of the Federal Rules of Civil

²This case was assigned to Judge John T. Nixon when this Motion was filed. Judge Nixon recused himself on September 30, 1998, and the case was reassigned to Judge Todd J. Campbell. Judge Campbell recused himself on October 16, 1998, and the case was reassigned to Judge Echols. On January 8, 1999, the case was transferred to Judge Aleta Traugher, who recused herself on June 21, 1999. The case was then reassigned to Judge Echols.

Procedure ("Rule 62(d)"). This position conflicts with the leading cases on this point.

Where a telecommunications provider seeks to stay the order of a state telecommunications regulatory agency, Rule 62(d) applies neither directly nor by analogy. Illinois Bell Tel. Co. v. WorldCom Technologies, Inc., 157 F.3d 500, 502 (7th Cir. 1998); Wisconsin Bell, Inc. v. TCG Milwaukee, Inc., 27 F.Supp.2d 1145, 1148 (W.D. Wis. 1998). See Michigan Bell Tel. Co. v. MFS Intelenet of Mich., Inc., 16 F.Supp.2d 828, 831 (W.D. Mich. 1998). This is because the relief sought is not a "stay" within the meaning of Rule 62. Rather, it is an interlocutory injunction. Illinois Bell, 157 F.3d at 503.

A court-issued injunction that prevents an administrative decision from taking effect must be justified under the four-part test set forth above. Granting an injunction is "an extraordinary and drastic remedy not to be imposed unless the movant has, by a clear showing, met the burden of persuasion." Michigan Bell, 16 F.Supp.2d at 831. "[A]t a minimum the movant must show serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if a stay is issued." Id.

In light of (1) the decision of the TRA, which accords with the findings of twenty other state commissions and conflicts with none, and (2) the FCC's Declaratory Ruling regarding the nature of ISP-bound calls, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC

99-38, 1999 FCC Lexis 821 (Feb. 25, 1999), the Court finds BellSouth has not made a substantial showing of likelihood of success on the merits.

With regard to the possibility of irreparable harm, the Court notes that (1) the TRA Order merely requires BellSouth to pay money in accordance with a contractual agreement, rather than to change position or take action in some inalterable way; and (2) BellSouth states that, in 1997, it had operating revenues in excess of \$15 billion, net income of approximately \$2.3 billion, and retained earnings in excess of \$1.1 billion. In light of these facts and circumstances, the Court finds BellSouth has failed to show likelihood of irreparable harm if it is ordered to comply with the TRA Order.

With regard to the possibility of harm resulting from a stay, the Court notes that Brooks Fiber alleges it is accruing damages of up to \$500,000 per month as a result of BellSouth's refusal to pay reciprocal compensation fees. As such, this refusal, which began on August 12, 1997, has resulted in the deferred receipt of as much as \$12,500,000. Although there is no evidence before the Court as to what percentage of Brooks Fiber's revenues this figure represents, the Court finds credible Brooks Fiber's assertion that its continuing inability to collect this money constitutes substantial harm.

Finally, the Court finds the public interest is served by requiring parties to live up to their legal and contractual obligations, as determined by state agencies and other government

entities. In this case, granting the requested stay would allow BellSouth to avoid these obligations, while hindering Brooks Fiber's ability to compete in the telecommunications market by denying it compensation on which it had relied and to which it is presently entitled under the Order. Allowing this obstacle to Brooks Fiber's competitiveness would frustrate the purpose of the Telecommunications Act, which is designed to foster a competitive market in place of the previously existing monopoly.

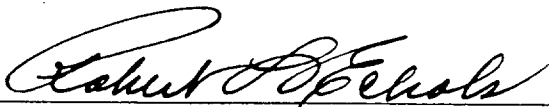
Having carefully reviewed the record and weighed each of the four factors, the Court finds that BellSouth has failed to meet its burden to show it is entitled to a preliminary injunction. Accordingly, the Motion is DENIED.

IV. CONCLUSION

For the reasons stated above, the requests for oral argument (Document Entry Nos. 14 and 24) and the Motion for Stay (Document Entry No. 12) are DENIED, and the Motion for Primary Jurisdiction Referral (Document Entry No. 10) is DENIED AS MOOT. BellSouth's Motion for Leave to File Supplemental Authority and for Order to Establish Procedural Schedule (Document Entry No. 38) is GRANTED.

With regard to the Procedural Schedule, it is ORDERED that BellSouth's dispositive motions and supporting memoranda be filed within sixty (60) days of entry of the accompanying Order; that Defendants' responses be filed within thirty (30) days thereafter;

and that replies, if any, be filed within fifteen (15) days of the filing of the response to which the reply pertains.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

	Apr-98	May-98	Jun-98	Jul-98	Aug-98	Sep-98	Oct-98	Nov-98	Dec-98	Jan-99	Feb-99
Restated Billing											
Actual Remittance	\$0	\$34,231	\$38,395	\$38,468	\$66,667	\$98,340	\$74,511	\$173,827	\$213,478	\$254,790	\$241,796
Restated Receivable	\$0	\$103	\$544	\$637	\$1,104	\$1,628	\$0	\$1,595	\$3,439	\$1,253	\$1,095
	\$0	\$34,128	\$37,851	\$37,831	\$65,563	\$96,712	\$74,511	\$172,232	\$210,039	\$253,537	\$240,701
Interest Expense	12% Annually			\$341	\$720	\$1,098	\$1,754	\$2,721	\$3,466	\$5,188	\$7,289

	12% Annually										
Restated Billing	\$0	\$34,231	\$38,395	\$38,468	\$66,667	\$98,340	\$74,511	\$173,827	\$213,478	\$254,790	\$241,796
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Interest Expense				\$341	\$720	\$1,098	\$1,754	\$2,721	\$3,466	\$5,188	\$7,289

Mar-99	Apr-99	May-99	Jun-99	Jul-99
\$390,438	\$334,243	\$115,762		
\$4,140	\$3,665	\$9,744		
\$386,299	\$330,578	\$106,017		
\$9,824	\$12,231	\$16,094	\$19,400	\$20,460

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.
OCT 06 1998

BELLSOUTH TELECOMMUNICATIONS, INC.,)

Plaintiff,)

v.)

BROOKS FIBER COMMUNICATIONS OF)
TENNESSEE, INC., THE TENNESSEE)
REGULATORY AUTHORITY, MELVIN J.)
MALONE, Chairman, H. LYNN GREER,)
Director, and SARA KYLE, Director,)

Defendants.)

BY _____
DEPUTY CLERK

Civil Case No.: 3-98-0811

JUDGE NIXON

MAGISTRATE JUDGE HAYNES

REPLY MEMORANDUM OF THE TENNESSEE REGULATORY AUTHORITY AND THE
DIRECTORS OF THE TENNESSEE REGULATORY AUTHORITY TO BELLSOUTH'S
MOTIONS FOR PRIMARY JURISDICTION REFERRAL AND TO STAY ORDER OF
TENNESSEE REGULATORY AUTHORITY

I. INTRODUCTION

Defendants, The Tennessee Regulatory Authority and Melvin Malone, H. Lynn Greer, and Sara Kyle, in their official capacities as Directors of the TRA, by their attorneys, respectfully submit this memorandum in reply to the Motion to Stay Order of TRA and Motion for Primary Jurisdiction Referral filed by BellSouth Telecommunications, Inc. ("BellSouth"). The Tennessee Regulatory Authority and the Directors thereof shall be collectively referred to herein as the "TRA."

II. BACKGROUND

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)(codified as amended in scattered sections of 47 U.S.C.)(the "Act") was enacted to promote competition and thereby secure lower prices for higher quality services, while encouraging the deployment of

new telecommunications technologies. See Act's Preamble. The Act provides that an incumbent local exchange carrier ("ILEC") such as BellSouth is required to allow a requesting telecommunications carrier to interconnect its facilities and equipment with the ILEC's network in a manner further specified by the Act. See 47 U.S.C. § 251(c)(2). State commissions, such as the TRA, are exclusively delegated the responsibility to "approve or reject" the parties' interconnection agreements. 47 U.S.C. § 252(e)(1). The Act further provides that all local exchange carriers have "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5).

On or about September 11, 1996, Brooks Fiber Communications, Inc. ("Brooks Fiber") and BellSouth voluntarily entered into an interconnection agreement (the "Interconnection Agreement"), pursuant to Sections 251 and 252 of the Act. See BellSouth's Petition for Judicial Review and Complaint for Declaratory Judgment and Other Relief ("BellSouth's Petition") at ¶ 14. The Interconnection Agreement provides, among other things, for the interconnection of the parties' respective networks, the unbundling of specific network elements offered by BellSouth, and the resale of BellSouth's telecommunications services to Brooks Fiber. See generally Interconnection Agreement, and amendment thereto, attached to BellSouth's Petition as Exhibit 2. Section 5.02 of the Interconnection Agreement, pursuant to Section 251(b)(5) of the Act, establishes a reciprocal compensation arrangement for the transport and termination of traffic between BellSouth and Brooks Fiber. The TRA considered and unanimously approved the Interconnection Agreement and a subsequent amendment thereto entered into by the parties.¹

On February 20, 1998, Brooks Fiber filed a Petition to Enforce Interconnection Agreement and for Emergency Relief ("Brooks Fiber's Petition") with the TRA, alleging that

¹ The orders approving the Interconnection Agreement and its subsequent amendment are attached to BellSouth's Petition as collective Exhibit 3.

BellSouth had breached the parties' Interconnection Agreement by refusing to compensate Brooks Fiber for terminating local calls made by BellSouth's customers to Internet service providers ("ISPs").² According to Brooks Fiber's Petition, BellSouth refused to pay any termination fees whatsoever until ISP traffic was separated from other traffic. See Brooks Fiber's Petition, at p. 2, n.1. BellSouth admitted that it refused to compensate Brooks Fiber under the reciprocal compensation provisions of the Interconnection Agreement for calls made to ISPs. See Answer of BellSouth to Brooks Fiber's Petition, at ¶¶ 3, 8 (attached hereto as **Exhibit 1**).

The sole question presented for resolution by the TRA, and for which review is presently sought before this Court, is whether calls to ISPs constitute "Local Traffic" as defined in the Interconnection Agreement. If calls to ISPs constitute "Local Traffic," then Article 5, Section 5.02(a) of the Interconnection Agreement provides that:

The delivery of **Local Traffic** between Brooks [Fiber] and BellSouth shall be reciprocal and compensation shall be mutual. The parties shall pay each other State-specific flat per minute uniform and mutual rates of \$0.0175 in Tennessee and \$0.010 in Mississippi for terminating Local Traffic (other than Transit Calls constituting Local Traffic) on each other's networks within the Territory. (emphasis added).

On April 21, 1998, after extensive briefing of the legal issues involved in the case, the Hearing Officer issued an Initial Order of Hearing Officer. (TRA's Initial Order of Hearing Officer is attached hereto as **Exhibit 8**). Upon BellSouth's motion for reconsideration, the TRA, as a panel, lawfully entered an Order Affirming Initial Order of Hearing Officer on August 17, 1998 finding that the parties' contract was unambiguous and that ISP traffic was "Local Traffic" for purposes of the Interconnection Agreement's reciprocal compensation provision. (The Order of August 17, 1998 was attached as Exhibit 1 to BellSouth's Petition). The Initial Order and Affirming Order shall collectively be referred to herein as the "TRA's Order." BellSouth

² Brooks Fibers' Petition is attached as Exhibit 5 to BellSouth's Petition.

ultimately seeks a reversal of the TRA's Order, but has motioned preliminarily to refer this matter to the Federal Communications Commission (the "FCC") and to grant a stay of the TRA's Order until the FCC has entered a ruling on the precise issue presented in this case. Because BellSouth's two motions are interrelated, the TRA submits this reply memorandum as a collective response to each of BellSouth's motions, as follows:

III. ARGUMENT

The underlying question presented in this matter is strictly legal in nature. Michigan Bell Telephone Co. v. MFS Intelenet of Michigan et al., 1998 WL 563992, at *3 (W.D. Mich. August 26, 1998) (attached hereto as **Exhibit 2**). Moreover, it is now a question that has been addressed by more than twenty-one (21) states and two (2) federal courts. An index and copies of the decisions of the twenty-one (21) state commissions unanimously concluding that ISP traffic is local and subject to reciprocal compensation is attached hereto as collective **Exhibit 3**. The two federal court decisions involve appeals of the rulings of the Texas Public Utility Commission and the Illinois Commerce Commission. The respective appellate courts upheld the rulings of the Texas and Illinois state commissions. See Southwestern Bell Tel. Co. v. Public Util. Comm'n, No. 98 CA 043, Slip Op. at 14-25 (W.D. Tex. June 16, 1998)(holding that calls to an ISP are "local traffic" and, therefore, eligible for reciprocal compensation.) (attached to BellSouth's Memorandum in Support of Motion for Primary Jurisdiction Referral as Exhibit 2); Illinois Bell Tel. Co. v. Worldcom Technologies, Inc. et. al., No. 98 C 1925, 1998 WL 419493, at *14 (N.D. Ill. July 23, 1998)(holding that "the ICC's determination that calls to the ISP terminate at the ISP is not contrary to federal law and is supported by substantial evidence.")(attached to BellSouth's Memorandum in Support of Motion for Primary Jurisdiction Referral as Exhibit 3).

In each case where the question has been considered, ISP traffic has been found to constitute “Local Traffic” subject to the payment of reciprocal compensation as proscribed by the Act and the parties’ respective interconnection agreements. Of course, each state did not review the exact same interconnection agreement, because each party to an interconnection agreement did not contract on exactly the same terms. However, that distinction is inconsequential to the proper resolution of the controlling question. Regardless of the unique aspects of the parties’ agreements, the reviewing bodies reached the exact same conclusion with respect to the nature of the traffic as being local and the duty of the parties to pay reciprocal compensation for the termination of such traffic.³ Thus, notwithstanding BellSouth’s allegations to the contrary, resolution of the controlling legal issue in reciprocal compensation cases has been uniform at both the state and federal level.

A. BellSouth’s Motion for Primary Jurisdiction Referral

BellSouth, fully cognizant that no state commission or federal court has agreed with its unilateral interpretation of either the nature of ISP traffic or the applicability of reciprocal compensation to such traffic, now moves this Court to “refer the **controlling legal issue** in this case to the FCC under the doctrine of primary jurisdiction.” BellSouth’s Memorandum in Support of its Motion for Primary Jurisdiction Referral, at p. 1. (emphasis added). BellSouth asserts, see pp. 11-13 of said Memorandum, that the following two (2) reasons justify primary jurisdiction referral in this case:

(1) The underlying facts of this case are clearly both technically complicated and outside the conventional experience of courts; and

³ It is important to note that reciprocal compensation provisions may be equally utilized by either party for the termination of ISP traffic.

(2) The central question at issue in this matter is one which ought to be considered by the FCC in the interests of a uniform and expert administration of the regulatory scheme laid down by the Act.⁴

Each of BellSouth's arguments lacks merit. First, the Act provides that jurisdiction resides in state commissions in matters involving the interpretation and enforcement of interconnection agreements. Iowa Utilities Bd. v. FCC, 120 F.3d 753, 804 (8th Cir. 1997), cert. granted, --U.S.--, 118 S.Ct. 879, 139 L.Ed.2d 867 (1998)(holding that "[N]othing in the Act even suggests that the FCC has the authority to enforce the terms of negotiated or arbitrated agreements or the general provisions of sections 251 and 252. The only grant of any review or enforcement authority to the FCC is contained in subsection 252(e)(5), and this provision authorizes the FCC to act only if a state commission fails to fulfill its duties under the Act. . . . **Allowing the FCC either to review state commission determinations regarding agreements implementing sections 251 and 252 or to enforce the terms of such agreements effectively would provide the FCC with jurisdiction over intrastate communication services in contravention of Section 2(b) [of the Act]. . . . We conclude that the language and structure of the Act combined with the operation of section 2(b) indicate that the provision of federal district court review contained in subsection 252(e)(6) is the exclusive means of obtaining review of state commission determinations under the Act and that state commissions are vested with the power to enforce the terms of the agreements they approve.**")(attached hereto as **Exhibit 4**) (emphasis added). Thus, BellSouth's position that the interpretation and enforcement of its

⁴ BellSouth's argument is principally that, although the two federal courts that have considered this issue uniformly agreed that competing local exchange carriers ("CLECs") are entitled to reciprocal compensation for terminating Internet traffic under the terms of the interconnection agreements in dispute, their decisions reflect a general lack of uniformity in this area merely because they did not use the exact same rationale in their deliberative processes. As those decisions are based upon sound legal principles and a thorough analysis of the relevant authority available, BellSouth's concern over any minor distinctions in rationale is not outcome determinative.

Interconnection Agreement is so technically complicated as to be “outside the conventional experience of courts” is wholly inconsistent with the Act’s terms and statutory intent.

BellSouth’s second argument that the FCC has the ability to uniformly and expertly administrate the regulatory scheme laid down by the Act must likewise fail. As the court reasoned in Iowa Utilities, the Act more highly prioritizes the jurisdictional boundaries of regulatory bodies in addressing issues arising under Sections 251 and 252 of the Act than any expertise that the FCC might be able to offer in such matters. See id. The rationale is simple. The TRA and other similarly situated state commissions are deemed by the Act to be best able to “fundamentally deal with intrastate telecommunications matters.” Id. The fact that all state commissions addressing this issue to date have reached a uniform conclusion that ISP traffic is “local traffic,” subject to reciprocal compensation, attests to such commissions’ abilities to, in the words of BellSouth, “uniformly and expertly administrate the regulatory scheme laid down by the Act.”

Finally, and perhaps most importantly, BellSouth’s request for primary jurisdiction should be rejected because it is wholly inconsistent with the most recent statement by the FCC of its preference in cases such as the instant matter. See Response of FCC as Amicus Curiae filed in BellSouth Telecommunications v. US LEC of North Carolina, et al., No. 3:98CV170-MU (W.D. N.C., Charlotte Division)(attached hereto as **Exhibit 5**).

As support for its motion for primary jurisdiction referral, BellSouth has submitted to this Court an Amicus Curiae motion and brief filed by the FCC on June 29, 1998, in Southwestern Bell Telephone Co. v. Public Utility Comm’n of Texas et al., No. MO-98-CA-43 (W.D. Tex. June 16, 1998)(The FCC’s motion and supporting memorandum are attached hereto as **Exhibit 6**). The court held in Southwestern Bell that calls to an ISP are “local traffic” and, therefore, are eligible for reciprocal compensation.⁵ Because the Southwestern Bell decision appeared to rely

⁵ In support of the TRA’s decision, the Southwestern Bell decision was cited in the TRA’s Order, at p. 7, n. 21.

heavily upon FCC rulings and opinions, the FCC filed a post-judgment Amicus Curiae brief to “clarify for the Court one aspect of the FCC’s position.” See FCC’s motion in Southwestern Bell, at p. 1. The FCC clarified that it has not yet issued a ruling concerning the rights of CLECs to receive reciprocal compensation for the transport and termination of traffic to CLEC subscribers that are information service providers. See FCC’s memorandum in Southwestern Bell, at p. 2. The FCC did not indicate exactly whether or when a ruling would be forthcoming, nor did it intimate what its position might ultimately be. The FCC merely formally stated that it had not yet definitively decided the precise question at issue.⁶ Id.

BellSouth’s motion for primary jurisdiction referral is tied to an erroneous premise that ISP traffic is jurisdictionally interstate. As such, BellSouth’s motion is without a basis in either fact or law and must be rejected. No competent jurisdiction or reviewing court has found that ISP traffic is anything other than local traffic. More than a year ago, BellSouth unilaterally decided that “interconnection agreements with BellSouth only appl[y] to local traffic and that, **because ISP traffic is jurisdictionally interstate**, BellSouth would neither pay, nor bill, local interconnection charges for traffic terminated to an ISP.” Letter of BellSouth dated August 12, 1997 (attached to BellSouth’s Petition as Exhibit 4) (some emphasis added). Since that time, BellSouth has raised numerous arguments to support its position. None of BellSouth’s arguments have been based upon an express finding by either the TRA, any federal appellate court, or the FCC. Although the FCC’s motion and memorandum in Southwestern Bell are being proffered by BellSouth now as indicative of the FCC’s future intent to squarely address the controlling legal issue in this matter, what the position of the FCC would be on such a question is purely speculative. BellSouth has not indicated in what specific context it believes the FCC will address

⁶ The District Court did not alter its judgment following the FCC’s Amicus Curiae filing. Southwestern Bell has appealed the decision.

the precise issue raised in this case. And, as recently as August 27, 1998, the FCC has clarified that it has no current intention to address the reciprocal compensation question at issue in this matter. See generally, Response of FCC as Amicus Curiae in BellSouth, supra, p. 7.

The FCC has indicated that its review of ISP traffic is limited to the question of whether it will assert any jurisdictional interest in such traffic. Id. at. pp. 4-6. Presumably, in hopeful anticipation of an FCC ruling that the FCC interprets the nature of ISP traffic as being somehow interstate and, therefore, in some way subject to the jurisdictional arm of the FCC, BellSouth, and other similarly situated ILECS, have begun the practice of petitioning for primary jurisdiction referral to the FCC in District Court appeals involving the reciprocal compensation issue. See generally Response of FCC as Amicus Curiae in BellSouth, supra, p. 7; see also Michigan Bell, supra, p. 4.

In BellSouth, BellSouth recently sought primary jurisdiction referral to the FCC from the U.S. District Court for the Western District of North Carolina, Charlotte Division. The FCC responded by filing an Amicus Curiae brief on August 28, 1998, expressly clarifying that the FCC's jurisdictional review of ISP traffic will not address the applicability of reciprocal compensation. Specifically, the FCC stated:

Several proceedings now pending before the agency pose the question whether calls to the Internet through ISPs are subject to FCC jurisdiction. The Commission will address this issue in the context of GTE's DSL tariff no later than October 30, 1998. It is unclear whether, or the extent to which, the FCC's resolution of the jurisdictional issue in the GTE tariff proceeding will be relevant to the proper treatment of ISP traffic under the terms of the interconnection agreement between BellSouth and US LEC. **The FCC notes that the jurisdictional issue before it in the tariff proceeding does not involve application of the reciprocal compensation provisions of section 251(b)(5) or interpretation of the terms of an interconnection agreement. Moreover, the proper construction of the specific compensation agreement previously entered into between the parties would not necessarily turn on a subsequent determination by the FCC with respect to its jurisdiction over ISP traffic.**

Accordingly, the FCC takes no position on BellSouth's motion for a primary jurisdiction referral of the jurisdictional question and also does not seek referral of questions relating to the enforcement of particular provisions of BellSouth's interconnection agreement with US LEC, including whether calls to ISPs are 'local' calls within the meaning of the reciprocal compensation provisions of that agreement.

Response of FCC as Amicus Curiae in BellSouth, *supra*, p. 7, at p. 6 (emphasis added). Because reciprocal compensation is inherently involved where local traffic is at issue, the FCC's most recent pronouncement that reciprocal compensation is not at issue in the matters pending before it makes clear that even if the FCC lays claim to some jurisdiction over ISP traffic, it will not have a bearing upon the instant case.

Moreover, notwithstanding the clear statement of the FCC that it does not want cases referred to it involving the question of whether calls to ISPs are "local" calls within the meaning of an interconnection agreement, that is precisely what BellSouth seeks of this Court. BellSouth has motioned this Court to ignore the FCC's position. Granting BellSouth's motion would only result in unnecessary delay. As the FCC acknowledges -- there is not necessarily a nexus between the FCC's assertion of jurisdiction over ISP traffic and the proper construction of the reciprocal compensation agreement between BellSouth and Brooks Fiber.

Even the FCC would agree that some ISP traffic is so local in nature as to not be subject to any reasonable argument that FCC jurisdiction might exist. Thus, if the FCC attempts to assert jurisdiction over ISP traffic, the extent of such jurisdiction is unknown. Moreover, the FCC's assertion of jurisdiction over some unknown portion of ISP traffic does not necessarily yield a further conclusion that ISP traffic is not subject to reciprocal compensation.

In any event, the FCC's assessment of the proper jurisdiction of ISP traffic is not necessarily the final word. Any ruling by the FCC could be the subject of additional litigation if state commissions, such as the TRA, believe the FCC has overreached its statutory grant of

authority under the Act. See Iowa Utilities, supra, p. 6. In addition to the federal appellate rulings in this area, there is national regulatory support for the position that jurisdiction over ISP traffic resides in the states. In the context of the pending GTE DSL tariff proceeding, the National Association of Regulatory Utility Commissioners (“NARUC”) filed a resolution with the FCC recognizing that, “The court decisions to date support that the states have regulatory oversight for these reciprocal compensation arrangements, including calls to ISPs, which must not be disregarded by the FCC in the course of resolving interconnection proceedings[.]” NARUC Resolution on Reciprocal Compensation for Calls to ISPs adopted July 29, 1998 (attached hereto as **Exhibit 7**). NARUC further concluded “that reciprocal compensation arrangements, including those for calls to ISPs, are subject to State authority without the need for the FCC to intervene or otherwise act in this matter.” Id.

As has been demonstrated, BellSouth’s motion for primary jurisdiction referral is based upon what BellSouth hopes will happen in the future at the FCC level. The TRA and appropriate courts of review, however, are bound to enforce the law as it can be reasonably interpreted today. Today, BellSouth’s position is without a basis in either fact or law and must be rejected. The TRA’s Hearing Officer in this matter recognized early on that “Although the TRA stands ready to apply any modifications to existing law when such modifications occur, it would be inappropriate, under circumstances such as those presented in this case, to bring the agency’s docket to a screeching halt in faithful anticipation of the same.” TRA’s Initial Order of Hearing Officer, supra 3, at p.11. The same is true of this Court’s assessment of the instant matter.

The TRA concedes that at least one court has granted, in part, a request for either a stay of a state commission’s order requiring reciprocal compensation for the termination of ISP traffic or the referral of the case to the FCC. See Michigan Bell, supra, p.4, at *4. In Michigan Bell,

the company sought either that the court “refer [the] matter to the FCC or stay its own proceedings pending the issuance of the FCC’s decision on the specific issue of whether calls to ISPs are local for the purpose of reciprocal compensation under [Section] 251(b)(5) of the Telecom Act.” Id. at *5. At the time of the Michigan Bell decision, i.e. August 26, 1998, the FCC had not yet submitted its Response as Amicus Curiae in the BellSouth case pending with the United States District Court for the Western District of North Carolina. In fact, it was the day after the Michigan Bell case was released, i.e. August 27, 1998, that the FCC filed its Response as Amicus Curiae in the BellSouth case, clarifying that:

[T]he proper construction of the specific compensation agreement previously entered into between the parties would not necessarily turn on a subsequent determination by the FCC with respect to its jurisdiction over ISP traffic.

Accordingly, the FCC . . . does not seek referral of questions relating to the enforcement of particular provisions of BellSouth’s interconnection agreement with US LEC, including whether calls to ISPs are ‘local’ calls within the meaning of the reciprocal compensation provisions of that agreement.

Response of FCC as Amicus Curiae in BellSouth, supra, p. 7, at p.2. Without the benefit of the FCC’s August 27, 1998 filing on this issue, the Michigan Bell court granted, in part, Michigan Bell’s motion. Michigan Bell, supra, p. 4, at *1 (citing the FCC’s Ex Parte Procedures Regarding Requests for Clarification of the Commission’s Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, FCC Pub. Not. 96-98, Rel No. DA 98-1641, 1998 FCC LEXIS 4191, released August 17, 1998)(attached hereto as **Exhibit 9**). Relying upon the FCC’s Ex Parte notice of August 17, 1998, the Michigan Bell court stated:

Because the FCC’s interpretation of this legal question [referring to the precise issue in the instant matter] is entitled to due deference by this Court, [citations omitted], it may well have an effect on the outcome of this case. As a result, the Court finds that a stay of this Court’s proceedings in this case is appropriate pending the issuance of the FCC’s ruling on this question.

Clearly, the Michigan Bell finding is not entitled to deference in light of the Response of FCC as Amicus Curiae filed in the BellSouth case on August 27, 1998.

With the benefit of that FCC Response, this Court should not make the mistake of referring the reciprocal compensation question to the FCC when the FCC, admittedly, (1) does not want to consider the applicability of reciprocal compensation to ISP traffic; (2) does not have a pending matter that directly addresses the applicability of reciprocal compensation to ISP traffic; and (3) concedes that “the proper construction of the specific compensation agreement previously entered into between the parties would not necessarily turn on a subsequent determination by the FCC with respect to its jurisdiction over ISP traffic.” Response of FCC as Amicus Curiae in BellSouth, *supra*, p. 7, at p. 6. Additionally, in light of the Iowa Utilities decision, it must be emphasized that the FCC may not even have jurisdiction to decide the reciprocal compensation issue.

B. BellSouth’s Motion to Stay the TRA’s Order

BellSouth’s Motion to Stay the TRA’s Order must likewise be denied. BellSouth asserts a right to have the TRA’s Order stayed based upon this Court’s “inherent authority, by analogy to Fed. R. Civ. P. 62(d), to issue a stay in this case.” BellSouth’s Memorandum in Support of Motion to Stay, p. 3. Neither the 1996 Act nor Fed. R. Civ. P. 62(d) provide for a stay during the pendency of appellate review of state commissions’ orders to enforce interconnection agreements. Rather, Fed. R. Civ. P. 62(d) provides for a stay during the appeal from a federal court judgment. Michigan Bell, *supra*, p. 4, at *2. In Michigan Bell, the Court squarely considered the question of whether Fed. R. Civ. P. 62(d) is applicable to stay a state commission’s order where, as is the case in this matter, the state commission held that ISP traffic was subject to reciprocal

compensation. Id. The Michigan Bell court held that “Rule 62(d) specifically, and Rule 62 in general, are not applicable to the instant case.” Id.

To the extent that BellSouth’s arguments in its Motion for Primary Jurisdiction Referral may be argued to support BellSouth’s Motion to Stay, the TRA respectfully incorporates herein, by reference, its arguments in opposition to primary jurisdiction referral.

Other regulatory considerations dictate a speedy and decisive denial of BellSouth’s Motion to Stay. Although BellSouth seeks a stay “to preserve the status quo while the Court reaches a decision on the merits[,]” see BellSouth’s Memorandum in Support of Motion to Stay, at p. 4, the record reflects that the “status quo” gives BellSouth a competitive advantage over Brooks Fiber and other similarly situated CLECs. As the record reflects, and BellSouth does not contest, Brooks Fiber shoulders a substantial financial burden by BellSouth’s refusal to pay reciprocal compensation for terminating ISP traffic. See BellSouth’s Memorandum in Support of Motion to Stay, at p. 2. (conceding that “Compliance with the TRA[’s] Order would require BellSouth to pay a substantial sum of money to Brooks Fiber.”); see also Brooks Fiber’s Petition to Enforce Interconnection Agreement, at p.3 (attached to BellSouth’s Petition for Judicial Review as Exhibit 5)(containing Brooks Fiber’s allegation that it is “losing up to \$500,000 a month in Tennessee”). Given the Act’s stated intent of promoting competition, it is unreasonable to militate in favor of BellSouth’s approach of wait-and-see, when (1) the impact on potential competitors such as Brooks Fiber is great; and (2) the TRA’s conclusion is rationally based in the law, is consistent with the conclusions of at least twenty-one other state jurisdictions, and is consistent with the conclusions of at least two federal appellate courts on review.⁷

⁷ Although the two federal courts that have considered this issue uniformly agreed that competing local exchange carriers (“CLECs”) are entitled to reciprocal compensation for terminating Internet traffic under the terms of the interconnection agreements in dispute, BellSouth attacks those decisions alleging that their reasoning was different. BellSouth’s emphasis on any distinctions in rationale among the appellate courts does not lessen the import of the consistent holdings of such courts. The legal conclusion that reciprocal compensation is payable for

BellSouth clearly understands the value of money, as it boldly asserts that “BellSouth should not be required to incur the risk and administrative expense associated with payment of a large sum to Brooks Fiber only to, **perhaps**, later be in the position of seeking return of the money[.]” Id. at p. 2 (emphasis added). By its argument for a stay of the TRA’s Order and waiver of the bond requirement, BellSouth asks this Court to speculate about the likelihood of BellSouth being able to carry its burden in demonstrating that the TRA’s Order was issued in error. Considering the overwhelming precedent for the TRA’s conclusion in this matter, there is little likelihood that BellSouth’s position is sustainable. BellSouth is asking this Court to overlook the overwhelming precedent in favor of the TRA’s position, and, instead, focus on the mere likelihood that the twenty-one state jurisdictions and two federal appellate courts will be “overruled” by some uncertain action of the FCC.

While it is unnecessary to fully argue the merits of the TRA’s case in response to BellSouth’s motions, it must be noted that the relative financial condition of the parties strongly militates in favor of the TRA’s Order being enforced during the pendency of this appeal. While arguing for a waiver of the bond requirement, BellSouth’s own words prove that BellSouth has far less to lose than Brooks Fiber by the enforcement of the TRA’s order during the pendency of this appeal. BellSouth admits, at pp. 9-10 of its Memorandum in Support of Motion to Stay Order:

BellSouth is a financially stable company. It is the primary provider of local telephone exchange service in Tennessee and eight other states in the Southeast, serving such major metropolitan areas as Atlanta, Georgia, Miami, Florida, Charlotte, North Carolina, as well as Nashville, Memphis, Knoxville, and Chattanooga. Howorth Affidavit ¶ 2 [attached as Exhibit 1 to Memorandum in Support of Motion to Stay Order]. For the year ending December 31, 1997,

calls that terminate at ISPs need not rest upon a single, uniform finding among either the states or federal appellate courts. Arguably, any interest in protecting the sanctity of FCC positions in this matter resides in the FCC. And, based upon the FCC’s position in its Amicus Curiae brief filed in BellSouth, it is clear that the FCC is not asserting an interest in the issue before this Court. Thus, it appears that the FCC would disagree with BellSouth about whether any purported distinctions in the federal appellate decisions necessitate FCC review of the matter.

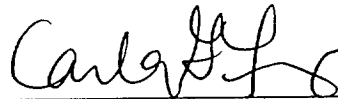
BellSouth had total operating revenues in excess of \$15 billion, had net income of approximately \$2.3 billion, and had retained earnings in excess of \$1.1 billion. [Id. at] ¶ 3, Ex. 1. BellSouth has considerable holdings in Tennessee, and the State Comptroller has assessed BellSouth's property in Tennessee at a value in excess of \$1.2 billion as of January 1, 1997.

Given BellSouth's admitted financial strength, enforcement of the TRA's Order during the pendency of this appeal will not substantially prejudice BellSouth financially. However, granting BellSouth's Motion to Stay the Order of the TRA will more than likely have a substantial negative effect on Brooks Fiber. In the unlikely event that BellSouth's Motion to Stay is granted, BellSouth should fully comply with the bond requirements to ensure the speediest recovery by Brooks Fiber at the conclusion of this appeal.

CONCLUSION

WHEREFORE, for the foregoing reasons, the TRA respectfully urges this Court to deny BellSouth's Motion for Primary Jurisdiction Referral and Motion to Stay Order of the TRA.

Respectfully submitted,



Carla G. Fox, # 15183
John Richard Collier, # 15343
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505
(615) 741-3191 (phone)
(615) 741-5015 (fax)

CERTIFICATE OF SERVICE

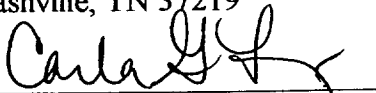
I hereby certify that on this the 6th day of October, 1998, I have caused to be served, either by hand-delivery or by depositing a copy of the same in the U.S. mail, postage pre-paid, a true copy of the TRA's Response to BellSouth's Motions for Primary Jurisdiction Referral and Motion to Stay Order of TRA to the following persons:

R. Dale Grimes
Jonathan C. Stewart
Bass, Berry & Sims PLC
2700 First American Center
Nashville, TN 37238

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce St., #2101
Nashville, TN 37201-3303

William Ellenberg
Bennett L. Ross
BellSouth Telecommunications, Inc.
675 W. Peachtree St., NE, #4300
Atlanta, GA 30375

Paul Alexis
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Nashville, TN 37219



Carla G. Fox

Adelphia Business Solutions
 BellSouth Mutual Compensation Settlement Summary - Tennessee
 Traffic Period - April 1998 through April 1999

	Apr-98	May-98	Jun-98	Jul-98	Aug-98	Sep-98	Oct-98	Nov-98	Dec-98	Jan-99	Feb-99
ling	\$0	\$34,231	\$38,395	\$38,468	\$66,667	\$98,340	\$74,511	\$173,827	\$213,478	\$254,790	\$241,796
ttance	\$0	\$103	\$544	\$637	\$1,104	\$1,628	\$0	\$1,595	\$3,439	\$1,253	\$1,095
ceivable	\$0	\$34,128	\$37,851	\$37,831	\$65,563	\$96,712	\$74,511	\$172,232	\$210,039	\$253,537	\$240,701
ense	12% Annually			\$341	\$720	\$1,098	\$1,754	\$2,721	\$3,466	\$5,188	\$7,289

Amount Due For Period	\$2,045,998
	\$100,586
	<u>\$2,146,584</u>